

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NORTHLAND FAMILY PLANNING
CLINIC, INC. et al.,

Plaintiffs,

v.

Civil Action No. 05-CV-70779-DT
Honorable Denise Page Hood

MICHAEL A. COX, Attorney General
and KIM L. WORTHY, Wayne County
Prosecutor,

Defendants.

**ORDER GRANTING PLAINTIFFS' MOTION FOR EXTENSION
OF TIME TO FILE RESPONSE/REPLY TO MOTION TO DISMISS
AND TO CONSOLIDATE BRIEFING WITH PLAINTIFFS' REPLY
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION
AND
ORDER GRANTING MOTION TO EXPEDITE**

On April 22, 2005, Plaintiffs filed the instant motion seeking an extension of time to file a response to Defendants' Motion to Dismiss filed on April 11, 2005 and to consolidate the briefing with Plaintiffs' Reply in Support of Preliminary Injunction. Defendants oppose the extension of time to be consolidated with the briefing with Plaintiffs' Reply in Support of Plaintiffs' Motion for Preliminary Injunction noting that the analysis between the two motions are different.

As Defendants note in their response to the instant motion, a four part test is required to determine the preliminary injunction motion, citing *Sandison v. Michigan High School Athletic Assoc.*, 64 F.3d 1026 (6th Cir. 1995). The first factor to be considered is the likelihood of success on the merits. *Id.* This necessarily means the Court must consider whether Plaintiffs have stated a claim under Fed. R. Civ. P. 12(b)(6), which is the basis of Defendants' Motion to Dismiss. At this juncture of the litigation, the two motions are intertwined and briefing may be consolidated.

The briefing schedule stipulated to by the parties provides that Defendants file their response to the Motion for Preliminary Injunction by May 13, 2005. Given Defendants' Motion to Dismiss, one of the arguments Defendants may raise is that Plaintiffs will not likely succeed on the merits because Plaintiffs have failed to state a claim upon which relief may be granted. It is therefore appropriate that Plaintiffs file their response to the Motion to Dismiss the same time as Plaintiffs' Reply to Defendants' Response to the Motion for Preliminary Injunction.

Accordingly,

IT IS ORDERED that Plaintiffs' Motion for Extension of Time to File Response/Reply as to Motion to Dismiss and Brief in Support and to Consolidate Briefing with Plaintiffs' Reply in Support of Motion for Preliminary Injunction (**Docket No. 26, filed April 22, 2005**) is GRANTED. Plaintiffs may file their Response to Defendants' Motion to Dismiss by May 31, 2005, along with a combined Reply Brief in Support of Plaintiffs' Motion for Preliminary Injunction. The combined Response/Reply brief may not exceed twenty-five (25) pages. Defendants may file a Reply Brief in support of Plaintiffs Motion to Dismiss by June 7, 2005.

IT IS FURTHER ORDERED that Plaintiffs' Motion to Expedite Motion for Consolidated Briefing (**Docket No. 28, filed April 22, 2005**) is GRANTED.

DATED: May 2, 2005

/s/ DENISE PAGE HOOD
DENISE PAGE HOOD
United States District Judge